UNIVERSITY OF ST. MICHAEL'S COLLEGE
3 1761 01973449 0

A COMMENTARY *on* CANON LAW

A COMMENTARY ON THE NEW CODE OF CANON LAW

By THE REV. P. CHAS. AUGUSTINE, O.S.B., D.D.
Professor of Canon Law

VOLUME VI
Administrative Law
(Can. 1154-1551)

B. HERDER BOOK CO.
17 SOUTH BROADWAY, ST. LOUIS, MO.
AND
68, GREAT RUSSELL ST., LONDON, W. C.
1921

CUM PERMISSU SUPERIORUM

NIHIL OBSTAT

Sti. Ludovici, die 18. Nov. 1920

F. G. Holweck,
Censor Librorum.

IMPRIMATUR

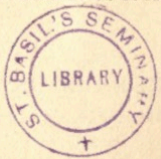
Sti. Ludovici, die 22. Nov. 1920

✠Joannes J. Glennon,
Archiepiscopus
Sti. Ludovici.

MAY 23 1952

Copyright, 1921
by
Joseph Gummersbach

All rights reserved
Printed in U. S. A.



VAIL-BALLOU COMPANY
BINGHAMTON AND NEW YORK

TITLE XXIII

THE CENSORSHIP AND PROHIBITION OF BOOKS

RIGHT OF THE CHURCH

CAN. 1384

§ 1. Ecclesiae est ius exigendi ne libros, quos ipsa iudicio suo antea non recognoverit, fideles edant, et a quibusvis editos ex iusta causa prohibendi.

§ 2. Quae sub hoc titulo de libris praescribuntur, publicationibus diariis, periodicis et aliis editis scriptis quibuslibet applicentur, nisi aliud constet.

The Church has the right to demand that the faithful shall not publish books which she has not previously approved by her judgment; she also has the right to forbid for a just reason books published by whomsoever.

The first refers to preventive censorship (*praevia librorum censura*) which touches Catholics only; whereas the second vindicates to the Church the right of prohibiting any and all books which she considers objectionable. The wording of the former clause is rather broad, for it would seem to include all kinds of books, even such on mathematics, agriculture, etc. However this law must be understood in the light of, and by comparison with, the canons of chapter 1, *infra*.

The text says that the Church has the right to censor and forbid books. As to previous censorship there can

be no doubt, because the faithful, as well as the matter itself, are subject to the authority of the Church, to whom all Catholics owe obedience in whatever refers to their salvation. Nevertheless the censorship has often been made the target of violent attacks. These attacks are unfounded. Paternal as well as political authorities have the *natural right* to ward off anything that may endanger the moral and physical welfare of their subjects, and to protect them against bad surroundings, company, literature, etc., in fact anything that is apt to cause insubordination, anarchy, or moral decay. The Church, being an autonomous society, with subjects for whom she is responsible within her own sphere cannot be destitute of the authority and power which enables her to keep her children uncontaminated and to safeguard them against the danger of perversion. Of all the dangers that imperil man's salvation bad literature is perhaps the most destructive. Hence the right to control the reading of her children cannot be denied the Church even from the purely natural point of vantage. Historical facts amply confirm the necessity of preventive censorship in Church and State.[1]

The Church, by divine right, is the *guardian and teacher of faith and morals,* the shepherd who must lead his sheep upon wholesome pasture and point out the poisonous weeds that endanger their welfare. This office requires repressive and preventive remedies which the Church is certainly allowed to apply in teaching and preserving the deposit of faith. One of these remedies is the censorship of books.[2] This has been *always exercised by the Church,* not indeed to the same extent and in

1 Cfr. the classical work of J. Hilgers, S. J., *Der Index der verbotenen Bücher,* 1904.

2 Hilgers, *l. c.,* p. 15 ff.; see also *The Ave Maria,* Notre Dame, Ind., Jan. 31, 1920, pp. 148 ff.

the same way, but in various ways and by different methods according to the exigencies of the times.[3] The Apostles frequently warned the faithful against the baneful influence of a too intimate intercourse with the enemies of Christianity either in word or writing.[4] The first express prohibition of a book is that of Arius' *Thalia*, which was forbidden by the Council of Nicaea (325). Then followed the lists, which look like incipient indices, of Popes Innocent I and Gelasius I, in which, besides the authentic books of the Old and New Testament, certain "apocryphal" books are enumerated.[5] Gregory the Great (590–604), Martin I (649–654), and Zachary (741–752) drew up new lists, and the practice was continued in the Middle Ages.

It goes without saying that the *invention of printing* called for more extensive and severer measures. Innocent VIII, Alexander VI, and Leo X commanded printers to submit all books to be printed to the ecclesiastical authorities for approval. An index of forbidden books in the modern sense of the word was that of Paul IV, published in 1559. It was followed by that of 1571, under the pontificate of St. Pius V, and others, which later were made superfluous by the more comprehensive index issued in 1758. This, together with the Constitution "*Sollicita ac provida*" of Benedict XIV (July 9, 1753) remained in force with scarcely any modification until Leo XIII issued his well-known Constitution "*Officiorum ac munerum*," Jan. 25, 1897.

3 Hilgers, pp. 3 ff.; Hurley, *A Commentary on the Present Index Legislation*, 1908, p. 23 ff.

4 I Tim. 6, 20; II Tim. 2, 16; Acts 19, 19.

5 Innocent I, Ep. 6, *ad Excep.*, c. 7 (Migne *P. L.*, 20, 501 f.); Gelasius' decree, see in c. 3, Dist. 16; the authenticity has given rise to doubts (Zahn, *Geschichte des Neutestam. Kanons*, 1890, II, i, 259 f.), which, however, are not borne out by solid critical research.

This constitution, as such, is now superseded by the Code insofar as it does not agree with the latter. At the same time it is well to remember that the wording, and sometimes even the substance, of the old law will assist us in determining the nature and extension of the new rules.[6]

§ 2 extends the meaning of the term *books* so as to include newspapers and other periodical publications as well as all other published writings, unless the contrary is manifest.[7]

Strictly speaking a *book* is a volume[8] consisting of a number of sheets of paper, now-a-days generally printed, and either bound or stitched together, which treats of one subject in a more or less coherent and systematic manner. It is generally held that a book must have some bulk (*aliqua moles*), that is, it should have at least 160 pages. Our text as well as the Constitution of Leo XIII draw a distinction between books and leaflets, etc. The *unitas objecti* is an essential feature of a book. Magazines, as a rule, do not treat of only one subject and hence, even if they are bound, do not constitute a book in the technical sense. But if a treatise is published in loose numbers (*fasciculi*), so as to form one whole, the term "book" applies to it. As to the manner of publication it must be observed that now-a-days by *book* we generally mean a *printed* volume, when we use the term without any further attribute. But a book need not necessarily be printed to be a book, else the manuscript treatises published before 1600 could not have been prohibited as books. Our text quite consistently applies the general

6 Hurley, *l. c.*, p. 51.

7 This is a decidedly new regulation for which Card. Gasparri could give no quotation.

8 Noldin, *Theol. Moralis*, Vol. II, 1914, n. 701, p. 726 f.

prohibition to all writings, no matter how published, so they be but *published, i. e.,* made accessible to all. As long as a manuscript or book remains the exclusive private property of the author, it cannot be called *editus.* A printer is not *eo ipso* a publisher (*editor*). An *author* may write a book for his own pleasure and have it printed; as long as he keeps it entirely to himself, it is not "published."

CHAPTER I

PREVIOUS CENSORSHIP

Previous censorship consists in the submission of a book to the proper authority for inspection, examination, and approval (or rejection). The law binds the author as well as the publisher, placing both under the obligation of submitting an intended publication to the proper authority. If the *imprimatur*, or permission to have the book published, is given, this means not an approval of its contents, but only the judgment of the respective authority that the book may, under present circumstances, be read without detriment to faith or morals.[1]

CAN. 1385

§ 1. Nisi censura ecclesiastica praecesserit, ne edantur etiam a laicis:

1.° Libri sacrarum Scripturarum vel eorundem adnotationes et commentaria;

2.° Libri qui divinas Scripturas, sacram theologiam, historiam ecclesiasticam, ius canonicum, theologiam naturalem, ethicen aliasve huiusmodi religiosas ac morales disciplinas spectant; libri ac libelli precum, devotionis vel doctrinae institutionisque religiosae, moralis, asceticae, mysticae aliique huiusmodi, quamvis ad fovendam pietatem conducere videantur; ac generaliter scripta in quibus aliquid sit quod religionis ac morum honestatis peculiariter intersit;

1 Noldin, *l. c.*, n. 708, p. 734.

3.° Imagines sacrae quovis modo imprimendae, sive preces adiunctas habeant, sive sine illis edantur.

§ 2. Licentiam edendi libros et imagines de quibus in § 1, dare potest vel loci Ordinarius proprius auctoris, vel Ordinarius loci in quo libri vel imagines publici iuris fiant, vel Ordinarius loci in quo imprimantur, ita tamen ut, si quis ex iis Ordinariis licentiam denegaverit, eam ab alio Ordinario petere auctor nequeat, nisi eundem certiorem fecerit de denegata ab alio licentia.

§ 3. Religiosi vero licentiam quoque sui Superioris maioris antea consequi debent.

This canon first lays down a general rule as to what books must be submitted to ecclesiastical censorship, and then designates the authority competent to grant the imprimatur.

§ 1. The following books, even though published by laymen, must be submitted to ecclesiastical censure:

1.° The *Books of Holy Writ* and annotations to and commentaries on the same.

Hence the *original text* of each and every one of the forty-five books of the Old Testament and the twenty-eight books of the New Testament must be submitted to ecclesiastical censorship. Also parts of the same (*pericopes*) and *translations* or versions, whether old or new. *Old versions* are the Latin Vulgate as well as the Itala, the Oriental versions of the Septuagint, the Syriac, Coptic, and Armenian. *New versions* are those made into modern languages. These translations must be submitted, even if only parts or *pericopes* are to be published, for instance, the Epistles and Gospels for Sundays and holy days. For the text simply says "*libri sacrarum Scripturarum,*" and can. 1384, § 2 finds its application here.

Adnotationes are short explanations or glosses, either

continuous or partial, such as were made on single words between the lines or in the margin, and are now generally placed at the foot of the page (foot-notes). It does not matter whether these notes are printed separately from, or together with, the text, whether they are original or translated, as our canon simply says, *vel.* Nor are foot-notes on the pericopes exempt from this law.

Commentaries are treatises in the form of annotations or explanations of the books of the Old and New Testament, altogether or severally. What was said concerning annotations also holds with regard to commentaries.

2.° The second paragraph of § 1 mentions three classes of books as subject to ecclesiastical censorship, namely, scientific, devotional, and general, especially,

(a) Books treating of Holy Scripture, sacred theology, Church history, Canon Law, theodicy, ethics, and other religious and moral disciplines.

"Books on *Holy Scripture*" here means the treatises called *introductions,* not works of exegesis proper, for the latter, being in the nature of a commentary, falls under no. 1. Introduction includes hermeneutics and "higher criticism," so-called.[2]

"Sacred theology" embraces treatises on dogmatic as well as moral theology, either single tracts, or the whole, written in any language, and published in any form.

"Church history," which is the scientific knowledge of the internal and external development of the Society founded by Jesus Christ, may be written as chronicles or in the form of general accounts, biographies, monographs, etc. It is true that the Church is distinct from the individuals that compose it,[3] but if any individual, for instance, St. Augustine,[4] is treated as the representative of a period

2 Pius X, "*Lamentabili,*" July 4, 1904, prop. 1.

3 Hurley, *l. c.,* p. 209.

4 See Von Hertling's *Augustinus*

or school of thought, the biography becomes part and parcel of ecclesiastical history. Therefore such a book must be submitted to censorship. The law does not, however, apply to purely secular or political history. The scope, then, or purpose of a book marks the dividing line.

As to *Canon Law*, we all know that this is a distinctly ecclesiastical discipline.

Natural Theology, or Theodicy is that part of philosophy which treats of God and His relations to His creatures from the standpoint of reason unaided by Revelation.

Ethics or moral philosophy, has for its object the moral rectitude of human acts in accordance with the ultimate principles of reason. To this discipline belong books on sociology, unless they are written from the merely economical or political viewpoint.

It would be difficult to explain the phrase, "*other such religious or moral disciplines*," since the sciences expressly mentioned seem to exhaust the subject. Treatises on Spiritism, hypnotism, astrology (formerly also alchemy) must find a place here because they usually touch religion and morals.

(b) Liable to censorship are furthermore: *large and small prayer-books and devotional, catechetical, moral, ascetical, mystical, and the like books and pamplets, even though* they seem to foster piety. To this class belong Bible histories, missals with vernacular translation, catechisms, lives of Saints, the Imitation of Christ, and similar books.[5] Of a mystic character are "The City of God"

("*Weltgeschichte in Karakterbildern*") Mainz, 1902, without episcopal imprimatur.

5 S. C. P. F., Jan. 3, 1777 (*Coll.* n. 519); S. Rit. C., Aug. 4, 1877 (*Dec. Auth.*, n. 3427); also the translations of the *Officium Parvum B. M. V.*; S. Rit. C., April 24, 1896, ad 1 (n. 3827).

by Mary of Agreda, the writings of Anne Catherine Emmerich, St. Catharine of Genoa, and others. Devotion is not always piety and devotional writings require particular vigilance. We may also place in this class all prophesies, private revelations, visions, etc., as well as new devotions of every kind.

(c) The law finally subjects to ecclesiastical censorship *"all writings which contain anything that particularly concerns religion and morals."* No distinction is made between books, but all are comprised that deal in any way with religion or morality. The phrase *"peculiariter intersit"* must be referred to the manner in which the subject is treated. *"Peculiariter"* is opposed to *"obiter"* or *"perfunctorie."* The manner of treatment must be measured by the length of the article or treatise. A long treatise would not savor peculiarly of religion or morality, if it contained only one or the other sentence bearing on those subjects.

A question has been raised regarding so-called *temperance leaflets.*[6] We will state our opinion fairly and squarely. If these leaflets advocate absolute prohibition, they should be forbidden, for prohibition is opposed to the natural law and clearly touches ethics. If they are merely intended to promote temperance, such leaflets come under the category of moral writings, because temperance is one of the four cardinal virtues which in the natural order belong to ethics, and in the supernatural order, to moral theology. From every viewpoint, therefore, these leaflets are subject to the censorship of the Church.

3.° *Sacred images,* no matter how printed, and whether with or without prayers, fall under ecclesiastical censor-

6 Cfr. Hurley, *l. c.*, p. 214 f.

ship. It is evident that only stamped or printed images are intended here, because the text refers only to books or things published in the form of printed matter. But of these all kinds, new and old,[7] are included,— engravings, photographs, chromos, lithographs, etc., etc. Not included are oil or water-colors and statues. If an image belong to the class of printed matter, it is immaterial how customary or unusual it be; for here not the *insolita imago* of can. 1279 is intended, but the image as such, provided, of course, it be *sacred*. Sacred images are all representations of the Blessed Trinity, of our Lord Jesus Christ, of the Blessed Virgin, of the Angels, Saints, and Blessed. Also images which represent a religious mystery, or a sacred scene, or groups of biblical events, or emblems representative of mysteries. The text says it matters not whether such images are printed with or without prayers. If a prayer is added, either at the bottom or on the back, the picture also falls under no. 2 of our canon.

§ 2 and § 3. The permission to publish books and images mentioned in § 1 may be granted by the local Ordinary of the author, or by the local Ordinary of the place of publication, or, finally, by the local Ordinary of the place where the books, etc., are printed. However, if any one of these Ordinaries refuses the *imprimatur*, the author is not allowed to ask it of another, unless the latter has been informed of the refusal.

Religious must obtain the permission of their superiors before applying for the episcopal imprimatur.

7 The text does not contain the adjective "*novae*" found in the "*Officiorum ac munerum*," n. 15; hence Vermeersch's view that new designs only must be submitted (*Comm.*, n. 20), no longer holds. Not included are *medals*, because these are not printed, but struck; see Vermeersch, *l. c.*

Our text is wider than that of the Leonine constitution [8] in admitting three Ordinaries as competent to give the imprimatur. It is also more liberal in regard to Bible editions, as will be seen under can. 1391. The local *Ordinary* of course is the bishop or the vicar-general, or whoever goes by that name. Since superiors of exempt religious are not local Ordinaries in the meaning of the Code, it would be evident, even if it were not mentioned in § 3, that such religious are not exempt from the obligation of asking the imprimatur of the diocesan bishop; but they may do so through their publisher or printer.

If the local Ordinary himself wishes to publish a book, he needs no imprimatur, even though the book were printed and published outside of his diocese.[9] The reason is that the author's Ordinary may give the *imprimatur*, who, in our case, is the author himself.

Which of the three Ordinaries mentioned should be asked to give the imprimatur is left to the judgment of the author. But in order to prevent deception and to uphold ecclesiastical authority, it is required that in case one of the three Ordinaries has refused the imprimatur, this fact must be stated to the other who is asked for the imprimatur. The latter will probably demand the reasons for the refusal either from the refusing Ordinary or from the author.

Religious, exempt as well as non-exempt, also need the permission of their superiors, who ought to subject every book that is to be published to an examination by competent scholars.[10]

8 "*Officiorum ac munerum,*" nn. 7, 35.

9 Formerly, as Noldin states (l. c., n. 710), an Ordinary needed the *imprimatur* of another Ordinary if his book was published outside his own diocese.

10 *Trid.*, Sess. 4, *De Editione et Usu SS. Librorum;* the superiors may abide by the verdict of the censors.

Whether rule 37 of the "Officiorum ac munerum" still holds, may well be doubted. This rule prescribed that if an author residing in Rome wished to have a book printed elsewhere than in the City, he needed only the approval of the Cardinal Vicar and the Master of the Sacred Palace. This rule rather restricts liberty and is not in accord with § 2 of can. 1385. Therefore we hardly believe that one would be obliged to abide by it, unless a local custom or written particular law would be superadded to said § 2.

OBLIGATIONS OF CLERICS AND LAYMEN

Can. 1386

§ 1. Vetantur clerici saeculares sine consensu suorum Ordinariorum, religiosi vero sine licentia sui Superioris maioris et Ordinarii loci, libros quoque, qui de rebus profanis tractent, edere, et in diariis, foliis vel libellis periodicis scribere vel eadem moderari.

§ 2. In diariis vero, foliis vel libellis periodicis qui religionem catholicam aut bonos mores impetere solent, nec laici catholici quidpiam conscribant, nisi iusta ac rationabili causa suadente, ab Ordinario loci probata.

§ 1. The secular clergy without the consent of their Ordinary, and religious without the permission of their higher superior and of the local Ordinary, are forbidden to publish books on secular subjects and to write for newspapers or other periodicals, publications, or to act as editors of such. The *consent* of the Ordinary is here clearly distinct from censorship proper, which requires a scientific examination, whereas the consent only means a judgment connected with the manifestation of an act

of the will. However this does not take away from the bishop the right of demanding specimen copies of a publication or the title thereof; nor does it prevent the bishop from refusing his consent if he thinks the author or editor incapable of treating the subject correctly and creditably.

This consent is required even for literary products of a purely worldly or technical character, no science or topic being excepted.[11] The reason is given in the above-mentioned Constitution of Leo XIII, to wit, "to give an example of ready obedience." Prompt submission is also required in two other cases; viz.: when clerics wish to contribute to periodic publications or if they desire to act as managers or editors of such publications as *diaria, folia, libelli periodici. Diaria* are newspapers, daily, weekly, or biweekly. *Folia* are publications published more or less irregularly, of undetermined size or number of pages, be they leaflets or brochures. *Libelli periodici* are quarterly, monthly, fortnightly, weekly, etc., magazines or reviews.

To write for such publications, therefore, the secular clergy need the permission of the bishop to whom they are subject, regardless of where the paper or magazine is printed or published. For the text simply says, "*suorum,*" which refers to the clergy, not to the publication. If we say, "to *whom they are subject,*" we mean habitually or legally, by virtue of incardination. Therefore a clergyman on his vacation, who wishes to contribute to a periodical publication, must obtain permission from his own bishop, not from the Ordinary in whose diocese he is sojourning.[12]

11 S. C. pro Negot. Eccl. Extraord., June 27, 1902, n. 3 (*Anal. Eccl.*, X, 73).

12 The local Ordinary of religious is the bishop in whose diocese their house is located; but we believe that

The question naturally arises whether clergymen and religious need the simple or double permission for *each and every article* they contribute to any periodic publication. From former legislation it would seem that regular correspondence or contributions are intended. Such at least is the tenor of the "*Sacrorum Antistitum*," of Sept. 1, 1910, from which our text is evidently taken: "*Ad sacerdotes quod attinet, qui correspondentium vel collaboratorum nomine vulgo veniunt*, etc." We would not press the term "*scribere*" in our text, though this, too, would seem to involve habitual writing. Hence we hardly believe that a brief occasional article would need episcopal consent. To say that the publication of a notice of a church festival, or parish event, or funeral required the special consent of the Ordinary or religious superior, would render the law ridiculous. On the other hand, a treatise or an elaborate article on any important subject, especially if it touches faith and morals, or ecclesiastical discipline, no doubt falls under the law. Also any important manuscript which religious would like to publish. Nor may religious with either simple or solemn vows publish their writings anonymously or under an assumed name, even with the local Ordinary's permission, if their superior has refused to give his imprimatur.[13]

It may be added that *female religious*, too, must abide by this law.

"*Eadem moderari*," to direct or manage periodical publications, also requires a double permission for religious, and the permission of the ordinary for secular clerics. This prohibition concerns the management or directorship of all newspapers, pamphlets, and periodicals without ex-

the local Ordinary of any diocese in which a religious lives for some time, may give the required permission, especially in the case of exempt religious.

13 Hurley, *l. c.*, p. 228.

ception. The canon here is somewhat stricter, at least in its wording, than the old law, but more logical and consistent.

Are *college papers* included? The text does not make a distinction, and hence they, too, need the permission of the local Ordinary in whose diocese the board of managers live, and of the religious superior, if religious are on the board of directors. But if lay students constitute the board, they need no permission from the local Ordinary. Female religious, however, do, no matter how pious the title of their magazine may sound.

What *if the Ordinary refuses* to consent to the publication of a book treating of secular matters only? In that case the author would do well to abide by the bishop's decision, provided there is no reason to assume personal spite. He may, however, demand the reason of the refusal. For although the Holy Office does not need to state its reasons, this prerogative cannot be extended to the bishops, and the S. Congregation of the Index decided that bishops must give their reasons for refusing the imprimatur in case a book is susceptible to correction.[14]

The author has another expedient, namely that offered in can. 1385, § 2; which allows him to seek another publisher or printer. In doing so an author would only be claiming a natural right.

§ 2. Not even *Catholic laymen* — much less clergymen and religious — may write for newspapers, pamphlets or other periodical publications which are accustomed to at-

14 S. C. Ind., Sept. 3, 1898, quoted by Hurley, who, in a circuitous way, concludes that the bishop is not bound to state the reasons (*l. c.*, p. 200, 224 f.); if he is bound to give his reasons in matters of faith and morals, he is surely also obliged to state his reasons for refusing to permit the publication of books of a profane nature; the contrary opinion is frivolous and unworthy of the episcopal office.

tack the Catholic faith or good morals. An exception to this rule may be made only for a just and valid reason, acknowledged to be such by the local Ordinary.

The publications to which even Catholic laymen should not contribute by way of correspondence or collaboration have been named above. Here a special class is singled out which is distinguished by its wicked purpose, *i. e.*, those which habitually attack the Catholic faith or good morals. Is our so-called *yellow press* included in this class of publications? It would be difficult to give a positive answer to this question. For we cannot say that they make it a practice to attack the Catholic faith, though, on the other hand, their scandalous reports on suicides, divorces, etc., are anything but favorable to good morals. Yet as these reports are not strictly attacks on morality, the solution depends on the general tendency of these publications. We think it must be admitted that regular contributions from Catholic pens might promote the sale of an objectionable paper and thereby further religious indifferentism. The law expressly permits extraordinary or occasional contributions for solid reasons. Thus, for instance, if a prelate or prominent priest is interviewed on an important public question, it might be permissible, nay even desirable, that he explain the Catholic position. Again a correction, or the defence of Catholic teaching against an attack might prove useful for the reason that it would reach parties which a Catholic paper could not reach.

VARIOUS EXCEPTIONS

CAN. 1387

Quae ad causas beatificationum et canonizationum Servorum Dei quoquo modo pertinent, sine licentia Sacrorum Rituum Congregationis edi nequeunt.

CAN. 1388

§ 1. Indulgentiarum libri omnes, summaria, libelli, folia, etc., in quibus earum concessiones continentur, ne edantur sine licentia Ordinarii loci.

§ 2. Requiritur vero expressa licentia Sedis Apostolicae ut typis edere liceat, quovis idiomate, tum collectionem authenticam precum piorumque operum quibus Sedes Apostolica indulgentias annexuit, tum elenchum indulgentiarum apostolicarum, tum summarium indulgentiarum vel antea collectum, sed nunquam approbatum, vel nunc primum ex diversis concessionibus colligendum.

CAN. 1389

Collectiones decretorum Romanarum Congregationum rursus edi nequeunt, nisi impetrata prius licentia et servatis conditionibus a Moderatoribus uniuscuiusque Congregationis praescriptis.

CAN. 1390

In edendis libris liturgicis eorumque partibus, itemque litaniis a Sancta Sede approbatis, debet de concordantia cum editionibus approbatis constare ex attestatione Ordinarii loci in quo imprimuntur aut publici iuris fiunt.

Matters pertaining to the *canonization and beatification* of servants of God may not be published without the permission of the S. Congregation of Rites. Urban VIII already ordered that the lives, deeds, and miracles of the venerable servants of God should not be published without the approval of the Ordinary, who had to report each

case to the Apostolic See, *i. e.,* the S. Congregation of Rites, in order that frauds, mistakes, and novelties might be avoided.[15]

Can. 1388 refers to books, summaries, booklets, leaflets, etc., containing *grants of indulgences.* These may not be published without the permission of the local Ordinary. The express permission of the *Holy See* is required for publishing, in any language, *authentic collections of prayers and good works* enriched with indulgences by the Apostolic See. The same express permission is required for publishing lists of papal indulgences, and summaries of indulgences, either already collected but not yet approved, or to be made from various grants. Concerning this we refer to can. 919, § 2.

Can. 1389 demands the permission of the respective officials for the republication of *collections of the various Roman Congregations.* If such permission is granted, the conditions laid down by the heads of the respective congregations must be faithfully complied with. What those conditions are is not explicitly stated. One of them is that the original text must be reproduced *ad literam.* Another one undoubtedly will be that a copy of the reprint shall be forwarded to the Cardinal Prefect or Secretary of the respective Congregation, provided permission for *republication* is given.

Notice the phrase, "*rursus edi*"; it supposes that a collection has already been made and published, as those of the S. Rit. C. and the Propaganda.

Can. 1390 concerns the *publication of liturgical books,* or parts thereof, and litanies approved by the Holy See. Reprints of these must agree with the approved text, and the Ordinary of the place where they are printed or pub-

15 "*Coelestis Hierusalem,*" July 5, 1634, § 1; S. Rit. C., July 31, 1821 (n. 2617).

lished must testify to such conformity. Of this enough has been said under canons 1257, 1259, and 1264.

BIBLE VERSIONS

CAN. 1391

Versiones sacrarum Scripturarum in linguam vernaculam typis imprimi nequeunt, nisi sint a Sede Apostolica probatae, aut nisi edantur sub vigilantia Episcoporum et cum adnotationibus praecipue excerptis ex sanctis Ecclesiae Patribus atque ex doctis catholicisque scriptoribus.

Translations of Holy Scripture into the vernacular may not be printed, unless they are approved by the Apostolic See or published under the supervision of the bishops, and are provided with notes taken chiefly from the Holy Fathers and learned and orthodox writers.

By Holy Scripture here is understood the text of the Old and New Testament. The plural seems to indicate that parts of Holy Writ are also intended. Hence even a portion of the Old Testament, say the Law, the Prophets and Ketubim, separately taken, fall under this rule; also the Gospels and the Epistles of St. Paul, when translated into the *vernacular*. Old versions, like the Syriac and Latin, which cannot be called vernacular in the proper sense, are excluded. But Arabic, English, French, German, Indian, Italian, Spanish, and the modern Slavic languages, also Chinese and Japanese, are vernacular, and translations of the Bible or any part thereof into any of these languages fall under the present canon, no matter whether the translators are Catholics or non-Catholics.

The *approving authority* is twofold: the Apostolic See and the bishop, the latter under certain conditions only.

(a) The *Holy See* may approve any versions with or without notes; it may even — which is, however, not likely to occur — approve translations made by non-Catholics;

(b) The bishop may approve any translation made under his supervision. "*Vigilantia episcoporum*" here has a special meaning, namely, that the translation must be carefully compared with the original text approved by the Church, or, at least, must substantially agree with a translation already approved.

Of course, a difficulty may arise from the fact that, with the exception of the Latin Vulgate, there is no approved original text,— the Greek text, and much more so the Hebrew-Massoretic text, being subject to many variants. The episcopal censor, therefore, had better keep to the Latin text, but he may make use of the original in doubtful cases. The translator as well as the censor must keep in mind the following canon, 1392.

But supervision is not enough; notes are also required. These notes should be taken from two sources, the writings of the Fathers and learned Catholic authors. The period of the "*Fathers,*" as is generally assumed, ends with the death of Isidore of Seville, A. D. 636. After that time we speak of Catholic writers. The prescribed annotations may be taken from the original works of the "Fathers" or from the current "Catenae," so they be but genuine. The Catholic authors here intended are not only those of the Scholastic period, but also of modern times, provided only they be really Catholic and learned. Purely mystic or devotional writings, where the allegorical sense of the text is unduly emphasized, should be entirely discarded, or at least used sparingly.

Our text employs a term which is not to be found in

Pope Leo's Constitution; it is the word *praecipue*, signifying that the notes should be taken *chiefly* from Catholic authors. This seems to imply that non-Catholic writers need not be entirely neglected. The historical and archaeological explanations and the critical readings of non-Catholic scholars may therefore find a place in the translations approved by the bishops.

WHEN A NEW APPROBATION IS DEMANDED

CAN. 1392

§ 1. Approbatio textus originalis alicuius operis, neque eiusdem in aliam linguam translationibus neque aliis editionibus suffragatur; quare et translationes et novae editiones operis approbati nova approbatione communiri debent.

§ 2. Excerpta e periodicis capita seorsim edita novae editiones non censentur nec proinde nova approbatione indigent.

§ 1. The approbation of the original text of a work does not imply approbation of translations into other languages or of new editions; therefore translations as well as new editions of a work already approved need a new approbation. Thus, for instance, a translation of the Little Office of the B. M. V. into the vernacular needs a new approbation every time it is republished. The Ordinary may grant this approbation if the text agrees with that approved by the Church, which agreement is left to the conscientious judgment of the bishop[16] to determine. The same rule applies to translations of the Roman Missal.[17]

16 S. Rit. C., Sept. 4, 1875 (n. 3373).

17 S. Rit. C., Aug. 4, 1877 (n. 3427).

One remark must, however, be added. Our text speaks of *editions* and translations. From this it must be concluded that mere *reprints*, either phototyped or lineotyped, accurately reproduced, require no new approbation. For it is evident that the purpose of the law is to prevent fraud or corruption of the original text.

§ 2. Extracts or *excerpts* from periodicals, published separately, are not new editions and therefore require no new approbation.[18] If these so-called reprints (in French *tirages à part*) cover a series of articles and develop into a book and are published in book form, do they require ecclesiastical approbation? We believe with Noldin [19] that they do, for the reason that the text mentions only *excerpta capita*, single extracts or chapters. Besides, there is always danger that such a reprinted book may contain substantial changes from the original text as published in the periodical.

Reprints of single articles, or, if the same subject was treated in two or three issues of a periodical, of several articles forming one chapter or treatise, need no new approbation.

DIOCESAN CENSORS

CAN. 1393

§ 1. In universis Curiis episcopalibus censores ex officio adsint, qui edenda cognoscant.

§ 2. Examinatores in suo obeundo officio, omni personarum acceptione deposita, tantummodo prae oculis habeant Ecclesiae dogmata et communem catholicorum doctrinam quae Conciliorum generalium decretis aut Sedis Apostolicae constitutionibus seu praescri-

18 S. C. Ind., May 23, 1898, ad 3 (*Coll. P. F.*, n. 2000).

19 *De Praeceptis*, 1914, ed. II, n. 706, p. 732 f.

ptionibus atque probatorum doctorum consensu continetur.

§ 3. Censores ex utroque clero eligantur aetate, eruditione, prudentia commendati, qui in doctrinis probandis improbandisque medio tutoque itinere eant.

§ 4. Censor sententiam scripto dare debet. Quae si faverit, Ordinarius potestatem edendi faciat, cui tamen praeponatur censoris iudicium, inscripto eius nomine. Extraordinariis tantum in adiunctis ac perquam raro, prudenti Ordinarii arbitrio, censoris mentio omitti poterit.

§ 5. Auctoribus censoris nomen pateat nunquam, antequam hic faventem sententiam ediderit.

These rules are chiefly taken from the Motu proprio of Pius X, "*Sacrorum Antistitum*," of Sept. 1, 1910, which was directed against Modernism.[20] They are:

§ 1. *Every diocese must have officially appointed censors*, for the examination of writings that are to be published. *Ex officio* means that there should be a regular censor, not merely one chosen for an emergency. The diocesan censors should be mentioned in the Catholic Directory.

§ 2. The *examiners* in discharging their office, should set aside all human respect and guide themselves solely by the dogmatic teaching of the Church as contained in the decrees of the general councils, in papal constitutions and decisions, and in the consent of approved doctors. This does not mean, however, that any opinion or system tolerated by the Church is to be condemned if it does not fit in with the views of the censor.

20 Of course, these rules are not entirely new, having been to a great extent, embodied in former documents like that of Clement VIII on the Index, Benedict XIV, "*Sollicita ac provida*," July 8, 1753, etc., see Hilgers, *l. c.*, p. 12, p. 59 f.; p. 535 ff.; *A. Ap. S.*, II, 661.

§ 3. The censors should be taken from *both the secular and the regular clergy,* and be men of mature age, distinguished by learning and prudence, who can safely keep the golden mean in approving or rejecting doctrines.

§ 4. The censor must give his verdict in *writing.* If the verdict is favorable, the Ordinary shall give his permission to publish (*i. e.,* the *imprimatur*), which must be preceded by the censor's verdict (the "*Nihil obstat*") and his signature. Only in very rare cases and under extraordinary circumstances, if the Ordinary deems it prudent, may the name of the censor be omitted.

§ 5. The censor's name must not be made known to authors before he has given a favorable opinion. This rule clearly presupposes that more than one censor is appointed in each diocese, as § 1 insinuates by using the plural number (*censores*).

We may quote here a remark taken from the "*Sacrorum antistitum,*" namely, that the title of censor has no juridical or canonical value and contributes no weight to the private opinion of the official entrusted with this duty. Therefore if the censor makes a mistake the author has no guaranty in the "*Nihil obstat*" that his book will not be put on the index.

THE IMPRIMATUR MUST BE GIVEN IN WRITING

CAN. 1394

§ 1. Licentia, qua Ordinarius potestatem edendi facit, in scriptis concedatur, in principio aut in fine libri, folii vel imaginis imprimenda, expresso nomine concedentis itemque loco et tempore concessionis.

§ 2. Si vero licentia deneganda videatur, roganti auctori, nisi gravis causa aliud exigat, rationes indicentur.

§ 3. The censors should be taken from *both the secular and the regular clergy,* and be men of mature age, distinguished by learning and prudence, who can safely keep the golden mean in approving or rejecting doctrines.

§ 4. The censor must give his verdict in *writing.* If the verdict is favorable, the Ordinary shall give his permission to publish (*i. e.,* the *imprimatur*), which must be preceded by the censor's verdict (the "*Nihil obstat*") and his signature. Only in very rare cases and under extraordinary circumstances, if the Ordinary deems it prudent, may the name of the censor be omitted.

§ 5. The censor's name must not be made known to authors before he has given a favorable opinion. This rule clearly presupposes that more than one censor is appointed in each diocese, as § 1 insinuates by using the plural number (*censores*).

We may quote here a remark taken from the "*Sacrorum antistitum,*" namely, that the title of censor has no juridical or canonical value and contributes no weight to the private opinion of the official entrusted with this duty. Therefore if the censor makes a mistake the author has no guaranty in the "*Nihil obstat*" that his book will not be put on the index.

THE IMPRIMATUR MUST BE GIVEN IN WRITING

CAN. 1394

§ 1. Licentia, qua Ordinarius potestatem edendi facit, in scriptis concedatur, in principio aut in fine libri, folii vel imaginis imprimenda, expresso nomine concedentis itemque loco et tempore concessionis.

§ 2. Si vero licentia deneganda videatur, roganti auctori, nisi gravis causa aliud exigat, rationes indicentur.

§ 1. The imprimatur should be given in writing and be placed either in the beginning or at the end of the book, leaflet or image, together with the name of the grantor, and the place and date of the grant. It is strongly advisable to print the year of publication on the title page,— a practice which is neglected by some, especially English, publishers.

§ 2. If the imprimatur is denied, the reasons should be given to the author upon demand, unless a weighty motive counsels the contrary. (See can. 1386.)

CHAPTER II

THE PROHIBITION OF BOOKS

Whilst previous censorship chiefly affects authors, and the faithful at large only indirectly, this second chapter is directly intended to safeguard the faith and morals of all Christians. We purposely say *all Christians,* not merely Catholics, because morality is something universal and common to all who believe in Christ. Of course, the legislator does not concern himself with those outside the Church; but Christians of all denominations ought to be grateful for this directive norm, which, as law, binds all Catholics. The censorship with which we now deal is called *repressiva,* because it aims at suppressing bad literature.[1]

WHO HAS THE POWER TO FORBID BOOKS

CAN. 1395

§ 1. Ius et officium libros ex iusta causa prohibendi competit non solum supremae auctoritati ecclesiasticae pro universa Ecclesia, sed pro suis subditis Conciliis quoque particularibus et locorum Ordinariis.

§ 2. Ab hac prohibitione datur ad Sanctam Sedem recursus, non tamen in suspensivo.

3. Etiam Abbas monasterii sui iuris et supremus religionis clericalis exemptae Moderator, cum suo Capitulo vel Consilio, potest libros ex iusta causa suis

1 S. C. Ind., Aug. 24, 1864 (*Coll. P. F.,* n. 1264).

subditis prohibere; idemque, si periculum sit in mora, possunt alii Superiores maiores cum proprio Consilio, ea tamen lege ut rem quantocius deferant ad supremum Moderatorem.

§ 1. The right and duty to forbid books for a just cause belongs to the supreme ecclesiastical authority for the whole Church, and to particular councils and local Ordinaries for their respective subjects.

§ 2. Recourse from this prohibition may be had to the Apostolic See, but only *in devolutivo*.

The act of forbidding books is an exercise of jurisdiction, part of which is the teaching office of the Church, which belongs to those who are judges in matters of faith and morals. The supreme authority of the Church exercises its influence over the entire Church, whilst the bishops exercise theirs only over those who are subject to them. Therefore the text properly says: "*pro suis subditis.*" From this we naturally conclude that *exempt religious* are not *juridically* bound to obey the episcopal injunction, that is to say, no penalty can be pronounced against them for not observing the Ordinary's edict. Morally they may be obliged to abide by the bishop's order because of scandal or the danger of weakening the episcopal authority, especially among laymen.[2]

If a *particular council* forbids a book, are the exempt religious living within its jurisdiction obliged to heed that prohibition? If the council is a diocesan synod, the exempt religious are not obliged to obey, since the sole legislator is the local Ordinary, to whom they are not subject. If, however, a provincial or plenary council is understood, its decrees, we believe, are binding on the whole territory,

2 Thus Vermeersch, *De Prohibitione et Censura Librorum*, n. 12 (ed. 1); Noldin, *De Praeceptis*, ed. 11, n. 704, p. 729.

especially if they are approved by Rome, and therefore also oblige exempt religious.[3]

§ 2 admits *recourse*, not appeal, to the Holy See, but such recourse has no suspensive character. Therefore the prohibition remains in force until the Apostolic See decides otherwise.

§ 3. *Abbots of autonomous monasteries* and the *superiors general* of exempt clerical institutes also may, for just reasons, forbid books to their subjects; but they must proceed together with their chapter or consultors. There is a juridical difficulty in this clause, because, as said above, the act of forbidding books rests on jurisdiction. This text is entirely new, and seems strange, as these superiors are not ordinarily considered to be judges in matters of faith.[4] Yet it is only the logical consequence of § 1, because the local Ordinaries have no jurisdiction over exempt religious. Therefore the reason advanced by the S. C. of the Index for extending the authority to forbid books to local Ordinaries and delegates of the Apostolic See — which extension is now antiquated — may be here applied. The *"pravorum librorum colluvies,"* the flood of perverse literature which is daily increasing in volume, clearly made it imperative to act promptly and efficaciously for the protection of the faithful, and this could be accomplished only by instructing the domestic authorities to stop the danger at the very beginning and, as it were, on the spot.[5]

Whether the chapter or the counsellors have a decisive, or merely an advisory vote, is not explicitly stated in the

3 This seems to follow from can. 291, § 2, because such decrees would affect also religious, and we hardly believe that exemption could be claimed in this case, although we readily grant that can. 291, § 2 only mentions territorial, not personal, obligation.

4 Can. 501, § 2.

5 S. C. Ind., Aug. 24, 1864 (*Coll. P. F.*, n. 1261).

text. This would seem to be a matter for the Constitutions to decide. To us it appears that a decisive vote is intended, to be given at the regular meeting, for the matter is of great importance. If there is a regular chapter, such as an independent monastery generally has, it is not enough that the abbot call the consultors; he must convene the chapter. *Capitulum* refers to the abbot of an autonomous monastery, *consilium* to the superior general.

The text continues: "If delay should be dangerous, the *other higher superiors* may, with the coöperation of their counsellors, also forbid books, but they are obliged to report the matter immediately to the superior general." The *alii superiores maiores* here intended are the provincials, etc., as explained under can. 488, n. 8. However, note the difference between the first and the second clause. The sentence of the abbots and superiors general is final and no further report is required, whereas that of inferior superiors is only provisional and requires the sanction of the superior general.

The reader may perhaps inquire whether the second clause applies to *female congregations*. No, because they lack a fundamental condition, *viz.*, jurisdiction. But we do not mean to say that a superioress would not be entitled to forbid a book to one of her religious, for this would be an exercise of domestic authority. But she could not forbid it to all as dangerous to faith and morals. Her prohibition would be a merely precautionary measure, and she would have to act according to can. 1397, § 1.

BOOKS FORBIDDEN BY THE APOSTOLIC SEE

CAN. 1396

Libri ab Apostolica Sede damnati ubique locorum et in quodcunque vertantur idioma prohibiti censeantur.

Books condemned by the Apostolic See must be considered as forbidden everywhere and in whatsoever language they may be translated.

The term "*Apostolic See*" comprises the Sovereign Pontiff as well as the S. Congregations, especially those directly concerned with the proscription of books.

(a) The *Pope* himself may forbid a book either by an "Apostolic letter," or without such a letter. There are on record four examples of books forbidden by Apostolic letter and without the coöperation of any congregation.[6]

(b) The *Holy Office* has issued about 900 decrees forbidding books from 1600 to 1900.[7] To this congregation our Code (can. 247, § 4) has affiliated the famous Congregation of the Index, which has the special duty of examining and prohibiting books.

(c) Other Congregations whose decrees figure in the new Index are that of *S. Rites* and that of *Indulgences* (the latter now incorporated with the S. Poenitentiaria). Besides, all other S. Congregations may take cognizance of and condemn books having special reference to their respective departments.[8]

As to the authority of the decisions rendered in regard to books the following may safely be stated:

The decisions given either by the Pope himself, or by

6 Cfr. Hilgers, *l. c.*, p. 89; Genovesi, Langeois des Chatellier, De Potter, Siegwart Müller.

7 *Ibid.*, p. 88.

8 *Ibid.*, p. 89.

a congregation of the Roman Court *do not, per se, contain a dogmatic or an ex cathedra definition, i. e.,* an infallible verdict as to the doctrine defended or proposed in the forbidden book. It goes without saying that the Pope *may* issue a decree condemning a book with infallible authority, but in that case his intention must be apparent from the wording of the decree. The Thursday sessions of the Holy Office, on account of the personal presence of the Sovereign Pontiff, are regarded as more weighty than the others; but even the decrees issued at these sessions cannot be called infallible or irreformable.[9]

It need not be added that these decisions must be received with the greatest respect and obedience and with internal as well as external submission.

Our canon says that the books condemned by the Apostolic See must be considered forbidden *everywhere.* The reason is because the Holy See is the supreme tribunal in matters of faith and morals. Books of purely local interest usually are left to the local Ordinaries. This also explains why *translations* of forbidden books are also forbidden, for the difference of language is merely accidental. The poison is the same, although the channel may differ.

THE OBLIGATION OF DENOUNCING BOOKS

CAN. 1397

§ 1. Omnium fidelium est, maxime clericorum et in dignitate ecclesiastica constitutorum eorumque qui doctrina praecellant, libros quos perniciosos iudicaverint, ad locorum Ordinarios aut ad Apostolicam Sedem deferre; id autem peculiari titulo pertinet ad Legatos

9 *Ibid.*, p. 74 f.; p. 88.

Sanctae Sedis, locorum Ordinarios, atque Rectores Universitatum catholicarum.

§ 2. Expedit ut in pravorum librorum denuntiatione non solum libri inscriptio indicetur, sed etiam, quantum fieri potest, causae exponantur cur liber prohibendus existimetur.

§ 3. Iis ad quos denuntiatio defertur, sanctum esto denuntiantium nomina secreta servare.

§ 4. Locorum Ordinarii per se aut, ubi opus fuerit, per sacerdotes idoneos vigilent in libros, qui in proprio territorio edantur aut venales prostent.

§ 5. Libros qui subtilius examen exigant vel de quibus ad salutarem effectum consequendum supremae auctoritatis sententia requiri videatur, ad Apostolicae Sedis iudicium Ordinarii deferant.

Denunciation savors of sycophancy, yet it may become an official duty. A prosecuting attorney, for instance, has to denounce crimes and criminals. Every society which cares for the observance of its laws must have custodians and guardians of the public welfare. Protestant sects promoted sycophancy by giving part of the fine imposed upon the guilty to their denouncers.[10] The Catholic Church does not hold out any material gain, but imposes a strict obligation on all concerned. However, there is a gradation of duty in regard to denouncing. Those who are bound *ex officio, i. e.*, the official guardians and judges in matters of faith and morals, are obliged *in justice* to denounce transgressors. The obligation is grave, as a rule, when the matter is serious, and the damage resulting from negligence would be great. Ordinary *Christians* on the other hand are as a rule bound to make

10 Cfr. Hilgers, *l. c.* pp. 70, 270 (in "free" Switzerland denunciation flourished), p. 304 (Hungary) and elsewhere, for inst., the Netherlands.

denunciation only when the matter is very important, as when a book causes great injury to faith and morals, or if a positive law imposes denunciation. Besides, it is evident that less educated persons are as a rule exempt from the obligation of denouncing books, unless their conscience raises an irresistible scruple, in which case they may refer the matter to the confessor. But cultured Catholics who move in the higher circles of society most certainly are bound to perform this duty. It is a natural duty enforced by positive law.[11] Hence our canon rules:

1. That it is the duty of all the faithful, especially of *clergymen, ecclesiastical dignitaries* and persons distinguished by learning to denounce books which they deem pernicious, to the local Ordinaries or to the Apostolic See. More especially is this duty incumbent on *papal legates, local Ordinaries,* and the *rectors of Catholic universities.* The last named organizations in the Middle Ages always were conspicuous for their zeal in maintaining orthodoxy, as is proved by their statutes, which forbade the professors as well as librarians to publish or sell manuscripts that had not been corrected and examined by the faculty.[12] Now-a-days, too, on account of the number of students as well as by reason of extensive literary acquisitions and communications, the Catholic universities are favorably situated for watching scientific productions.

2. When denouncing a book it is expedient that *not only the title of the book* be indicated, but also the *objectionable passages be singled out* which call for a prohibition. Such coöperation facilitates the work of the consultors and censors, who are usually overburdened, and, besides, guarantees the acumen and sincerity of the denouncing person.

11 Cfr. "*Officiorum ac munerum,*" n. 27 ff.
12 Hilgers, *l. c.,* p. 404.

3. Those who receive the denunciation, *i. e.,* usually the officials of either the Roman or the diocesan court, are strictly bound to keep the *name of the denouncer secret.* This is a grievous obligation, enhanced for the officials of the Sant' Uffizio by their sacred oath. The Secretary of the S. Congregation, however, is authorized to communicate to the author the objections made to his book, but he may not divulge the name of the denouncer or censor.[13]

4. The local Ordinaries, either personally, or, if necessary, through capable priests, should watch the books that are published and sold in their territory. This was the duty of the so-called *vigilance commissions* prescribed by Pius X against the Modernists.[14] Although the Code does not enforce this law, the Holy Office has decided that it remains in force until the Apostolic See orders differently.[15]

The members of the diocesan vigilance commission may perform their duty at regular sessions, to be held every other month, or by written communication.[16] It is clear that an effective control can be exercised only over *Catholic* firms, who may be deprived of their title of Catholic book-sellers if they refuse to obey episcopal orders. Even if a book has the *imprimatur,* but is proved to be infected with modernism, it must be withdrawn from sale or exhibition.[17] Priests, especially pastors and confessors, should watch over the reading of the faithful, particularly over circulating libraries and also public libraries. Much can be accomplished by prudent vigi-

13 Benedict XIV, "*Sollicita ac provida*," July 9, 1753, § 12.

14 "*Sacrorum Antistitum*," Sept. 1, 1910 (*A. Ap. S.*, II, 664).

15 S. O., March 22, 1918 (*A. Ap. S.*, X, 136).

16 S. C. Consist., Sept. 25, 1910, ad II, III (*A. Ap. S.*, II, 740 f.).

17 "*Sacrorum Antistitum*," n. III (*A. Ap. S.*, II, 660).

lance in keeping these institutions free from objectionable books.

5. Books which require a more thorough examination or call for the judgment of the supreme tribunal, should be referred to the Holy See by the Ordinaries — by all Ordinaries, not only the diocesan bishops. Sometimes the matter at issue may not be delicate or difficult, but the author's name and reputation require an emphatic and more solemn sentence, to produce the desired effect.

THE EFFECTS OF PROHIBITION

CAN. 1398

§ 1. Prohibitio librorum id efficit ut liber sine debita licentia nec edi, nec legi, nec vendi, nec retineri, nec in aliam linguam verti, nec ullo modo cum aliis communicari possit.

§ 2. Liber quoquo modo prohibitus rursus in lucem edi nequit, nisi, factis correctionibus, licentiam is dederit qui librum prohibuerat eiusve Superior vel successor.

§ 1. The prohibition of books has this effect that a forbidden book may not be published, nor read, nor kept, nor sold, nor translated into another language, nor communicated to others in any way.

The term *edere* (to publish) concerns the author, the editor, and the printer: the *author* of the book is forbidden to have it printed and published; the *editor* may not sell it, and the *printer* may not print and bind it, either personally or through others. Accessory helpers and remote coöperators are hardly affected, as otherwise there would be an indefinite number of persons included.

Reading a book means the operation by which the

contents of a book are conveyed to the mind through the senses of vision or hearing. If one would employ another to read a forbidden book to him, he would certainly read it himself and would incur the penalty of the law.[18]

To *keep a book* (*retinere*) means to possess it permanently as one's personal property or to have it in one's possession temporarily or transiently so as to be able to make free use of it. Librarians are not said to keep, but rather to guard the books entrusted to their care. The length of time is immaterial, but must amount to a somewhat protracted action, as the reduplicative particle *re* indicates.

Books may be *sold* in stores or at auction, at wholesale or retail, of which more under can. 1404.

What *translations* are is generally known. Here we will only observe that it does not matter whether the objectionable passages or parts of a forbidden book are omitted or explained in the translation; as long as the original text is forbidden, the translation is also forbidden, unless expressly approved.

Communicare aliis means to loan a book to others or to exchange it for another. It may also imply making the contents known to others. In this latter sense the reading of a forbidden book to others, for instance, by a teacher to his pupils, is forbidden.[19]

18 To read a book means to assimilate a considerable part thereof (Vermeersch, *l. c.*, n. 32, n. 11); the opinion of St. Alphonsus, referred to by Noldin (*l. c.*, n. 702, p. 728), and opposed to what we say in the text, is contrary to Reg. Iuris 72 in 6°. Of course, if one would hear some parts of a forbidden book read by mere chance, he would not fall under the law. Readers are also those who read the proofsheets of a book.

19 Under this heading as well as under that of "retaining" fall restaurants, hotels, boarding houses, etc., which keep objectionable papers and magazines and place them at the disposal of their guests. The owners of these places are certainly not allowed to keep literature which is manifestly contrary to faith and morals.

Here may be added some explanations given by the Holy Office. A book may not be read, even if the contents are not understood or the errors are not accepted. This applies also to Protestant Bible translations: they may not be read even if the missionaries, for instance, have corrected the erroneous passages.[20] Neither may a forbidden book be read or retained for a good and holy purpose.[21]

Books which are forbidden with the clause, "*donec expurgentur,*" may not be retained until they have been corrected.[22]

§ 2. A book forbidden no matter how, *may not be republished* until after it has been corrected and the one who forbade it, or his superior or successor, has granted permission to republish it. Therefore, if the bishop has forbidden a book, and recourse was had to the Roman Congregation, who granted the imprimatur, the book may be published. Note also the term *quoquo modo,* in whatever manner forbidden. The Constitution of Leo XIII (n. 31) applied that rule to books prohibited by the Apostolic See. But our text says in a general way, no matter how and by whom forbidden, whether by general rules or special prohibition, whether by the Ordinaries or by the Apostolic See. The latter is always ready to accept corrections made by the author, provided he has duly submitted himself and his corrections are accepted by the examiners.

20 S. O., July 26, 1848 (*Coll. P. F.*, n. 1030).

21 S. O., June 29, 1817 (*ibid.*, n. 718).

22 *Prop. 45 damn.*, March 18, 1666 (Denzinger, n. 1016).

LIST OF FORBIDDEN BOOKS

CAN. 1399

Ipso iure prohibentur:

1.° Editiones textus originalis et antiquarum versionum catholicarum sacrae Scripturae, etiam Ecclesiae Orientalis, ab acatholicis quibuslibet publicatae; itemque eiusdem versiones in quamvis linguam, ab eisdem confectae vel editae;

2.° Libri quorumvis scriptorum, haeresim vel schisma propugnantes, aut ipsa religionis fundamenta quoquo modo evertere nitentes;

3.° Libri qui religionem aut bonos mores, data opera, impetunt;

4.° Libri quorumvis acatholicorum, qui ex professo de religione tractant, nisi constet nihil in eis contra fidem catholicam contineri;

5.° Libri de quibus in can. 1385, § 1, n. 1 et can. 1391; itemque ex illis de quibus in cit. can. 1385, § 1, n. 2, libri ac libelli qui novas apparitiones, revelationes, visiones, prophetias, miracula enarrant, vel qui novas inducunt devotiones, etiam sub praetextu quod sint privatae, si editi fuerint non servatis canonum praescriptionibus;

6.° Libri qui quodlibet ex catholicis dogmatibus impugnant vel derident, qui errores ab Apostolica Sede proscriptos tuentur, qui cultui divino detrahunt, qui disciplinam ecclesiasticam evertere contendunt, et qui data opera ecclesiasticam hierarchiam, aut statum clericalem vel religiosum probris afficiunt;

7.° Libri qui cuiusvis generis superstitionem, sortilegia, divinationem, magiam, evocationem spirituum, aliaque id genus docent vel commendant;

8.° Libri qui duellum vel suicidium, vel divortium licita statuunt, qui de sectis massonicis vel aliis eiusdem generis societatibus agentes, eas utiles et non perniciosas Ecclesiae et civili societati esse contendunt;

9.° Libri qui res lascivas seu obscenas ex professo tractant, narrant, aut docent;

10.° Editiones librorum liturgicorum a Sede Apostolica approbatorum, in quibus quidpiam immutatum fuerit, ita ut cum authenticis editionibus a Sancta Sede approbatis non congruant;

11.° Libri quibus divulgantur indulgentiae apocryphae vel a Sancta Sede proscriptae aut revocatae;

12.° Imagines quoquo modo impressae Domini Nostri Iesu Christi, Beatae Mariae Virginis, Angelorum atque Sanctorum vel aliorum Servorum Dei ab Ecclesiae sensu et decretis alienae.

By law (*i. e.*, common law) are forbidden:

1.° *Editions* of the original text and of ancient Catholic versions of *Holy Scripture,* also of the Oriental Church, which have been published by non-Catholics; also *translations* of the same into any language made or published by non-Catholics.

The *original text* of the O. T. is in Hebrew, except portions of the Book of Esdras and about half of Daniel, which are written in Chaldean. The Books of Judith, Tobias, Baruch, Ecclesiasticus, I Machabees and parts of Daniel were written either in Hebrew or in Chaldean, but are preserved only in translations, of which the Greek Septuagint is the oldest. The book of Wisdom, II Machabees and the whole of the N. T. were composed in *Greek,* and have come down to us in that language.

Ancient translations are several Greek and Chaldean translations of the O. T.; a Samaritan version of the

Pentateuch, some Syriac versions (especially the Peshitto of the Ist century), several Arabic (mainly made in the Xth century by a Jewish rabbi), one Armenian (IVth century) one Coptic (IIIrd century) one Ethiopian (IVth century), one Slavonic, one Gothic (by Wulfilas, IVth century); and especially the Latin versions called Itala and Vulgate.[23] All these texts and versions, if published by non-Catholics, are forbidden, for the reason that there is danger of perversion and hypercriticism, which may lead to the elimination of genuine texts or wrong punctuation, etc. By issuing this prohibition, of course, the Church does not wish to slur well-deserving non-Catholic editors or their work. She merely desires to safeguard the text of S. Scripture and the faith of her children.

More liable to carelessness and perversion than the ancient versions are the *translations into modern languages,* of which the King James Bible furnishes an example. Most of them entirely omit the so-called deutero-canonical books and thus offer a mutilated Bible.

2.° The *books of writers defending or championing heresy and schism, or attempting in any way to undermine the very foundations of religion.*

The text omits the term *"apostates,"* found in the Leonine legislation, for the reason, apparently, that they are included either in this paragraph or the following two. *Propugnare* means an argumentative defence. Heresy and schism have been defined in can. 1325, § 2.

The foundations of religion are the fundamental truths of both the natural and the supernatural, i. e., revealed, order,— the existence of God, the immortality of the soul, the possibility and reality of miracles, etc., as generally set forth in handbooks of fundamental theology or

23 Seisenberger, *Practical Handbook for the Study of the Bible,* (Engl. Transl.) 1911, p. 213; p. 235.

apologetics.[24] The undermining, *evertere,* may be done by casting ridicule upon these fundamental truths; hence satirical, also sceptical writings would suffice.

3.° *Books which purposely attack religion or good morals. Data opera* appears to mean the same as *ex professo,* and is opposed to such expressions as *perfunctorie* and *obiter.* It may be, however, that *data opera* is intended to signify the intention. This would have to manifest itself in some way, whereas *ex professo* rather refers to the way and style of handling the arguments or subject. Practically the two phrases are hardly to be distinguished from each other.

What is understood by *religion* is not expressly determined, but there can be no doubt that the term here denotes first and above all the true religion of Christ, and secondarily natural religion, which governs the relations between God and His creatures.

"*Good morals*" comprise the principles laid down by ethics as well as moral theology, not only the system as a whole, but any part of it. Thus, for instance, a book defending "race suicide" or profiteering would no doubt be opposed to good morals.

Impetere means not only to make incoherent statements, as is done in newspapers, but to launch an elaborate or a systematic attack.

4.° *Books by non-Catholics which professedly treat of religion,* unless it is certain that they contain nothing contrary to the Catholic faith.[25]

The *author* must be a non-Catholic,—*i. e.,* a pagan, Jew,

24 Thus Wernz, *Ius Decret.,* Vol. III, ed. 1, p. 119, n. 111. Vermeersch (*l. c.,* n. 13) excludes "*praecipua dogmata ipsius fidei*" and seems to insist too much on the distinction between scientific and religious foundations; it is not true that all these are included in heresy and schism, for not all heretics and schismatics attack them.

25 Wernz, *l. c.;* Hurley, *l. c.,* p. 62.

Moslem, heretic, schismatic, or an apostatized Catholic, for our Code always uses the term non-Catholic in this wide sense.

The phrase "*ab acatholicis quibuslibet*" in no. 1 of the present canon shows that, as in the Constitution of Leo XIII, so here also the term "non-Catholic" must be interpreted in the widest sense.[26]

The *subject* is religion, without any further determination, therefore natural as well as supernatural religion, for in the final analysis all religion affects the attributes of God.

The *mode* of treating religion must be *ex professo*, which, as stated before, signifies not a mere transient or cursory statement, but a formal and developed argument dealing with at least a notable and considerable part of the subject in question. Such, for instance, are sermons or discourses written by non-Catholics, histories of religion, etc.

The *restrictive clause* "*nisi constet . . .*" permits the reading of such books if it is morally certain that they contain nothing against the Catholic faith, either by way of assertion, innuendo, or induction. The word *nihil* is a wide term, as it marks a universal negation and generally admits of no restriction. Still stronger would be the expressions, "*nihil penitus*," or "*nihil omnino*," which absolutely exclude everything and anything.[27] But since the simple term "nothing" is used here, we may admit the adage "*parum pro nihilo putatur*," and say that one or the other sentence of little importance against the Catholic faith might be overlooked, especially if there is a palpable absence of malicious intent.

It is said that one must be *morally certain* that the book

26 Wernz, *l. c.*, p. 119 f.

27 Barbosa, *Tractatus Varii*, Dictio 214 (ed. Lugdun., 1660, p. 725).

contains nothing objectionable. This certainly may be obtained by reading the book, either privately or officially, on the part of persons who are capable of judging it and possess a conscientious disposition.

5.° *Bibles and Biblical annotations and commentaries,* modern translations of the Bible, *i. e.,* into the vernacular, and all books mentioned in can. 1385, § 1, n. 2, books and booklets which narrate new apparitions, revelations, visions, prophecies, miracles or aim to introduce new devotions, even though they pretend to be purely private, if published without regard to the rules prescribed, *i. e.,* without complying with the law of previous censorship (can. 1393).

Note the word *narrare,* which is historical rather than theological or scientific. However, a mere report in a newspaper or magazine could hardly be intended, because the term appears to require a longer treatise.[28] This rule also applies to "war prophesies," of which we heard so much of late. It does not matter whether the facts narrated are objectively true or not.

New devotions are such as have not yet been approved by ecclesiastical authority. In regard to new devotions, as well as to *apparitions,* for instance, of the Blessed Virgin Mary, observe that, if they were believed and tolerated for a long time, and never disapproved by the Holy See, they may continue to be tolerated by the local Ordinary, who may also approve them and thus render them permissible. In case of episcopal approbation, the Ordinary should add a declaration to the effect that the respective devotion is tolerated on account of immemorial custom.[29]

28 Thus also Vermeersch, *l. c.,* n. 14. This seems also evident from the opposition: books and booklets. Their chief purpose must be the narration of such things, no matter whether the narrator himself believes the story or not.

29 S. Rit. C., Feb. 6, 1875; May 12, 1877 (*Dec. Auth.,* nn. 3336, 3419).

The previous *censorship,* therefore, is required for all these books, and without the Ordinary's imprimatur no one may read them, even for private devotion.

6.° This number contains several classes of books which are best kept separate, namely:

(a) *Books which attack or ridicule any dogma of the Catholic Church.* Dogma here means an article of divine or Catholic faith. The attack may be made by argument or in the form of a simple statement. Ridicule may be contained in one sentence.

(b) *Books which defend errors that have been proscribed by the Apostolic See, i. e.,* by the Pope himself, or by one of the S. Congregations.[30] This law refers principally to formally condemned errors of heretics, *e. g.,* Jansenius, Bajus, Molinos, etc., also to the propositions censured in the Syllabus of Pius IX and the so-called New Syllabus of Pius X.

(c) *Books which disparage divine worship. Cultus divinus* is here evidently to be taken in the same sense in which the Code uses the term in can. 1255 ff., *i. e.,* the worship paid to God and His Saints as well as the liturgical functions of the Church, which are nothing else but visible manifestations of internal worship.

Detrahere signifies a kind of slander of a person or disparagement of some object connected with that person. Thus the worship of relics and sacred images is disparaged by iconoclastic propositions.

(d) *Books which seek to undermine ecclesiastical discipline.* To this class belong writings directed against the Canon Law and the divine liturgy. Ecclesiastical discipline comprises all the measures taken by the Church to preserve and develop the society founded by Christ. The

30 It is not necessary that any specific qualification (*erronea, temeraria, scandalosa, piarum aurium offensiva,* etc.) be added.

term includes the holy seasons, the sacred liturgy, the duties and privileges of clergy and laymen,[31] etc.

(e) *Books which of set purpose insult the ecclesiastical hierarchy or the clerical or religious state.* The term insult is liable to a more or less subjective interpretation. Essentially it means an undeserved affront or indignity offered to one's self-respect. The insult, to bring a book within the prohibited class, must strike at the hierarchy *as such*, not at single persons. The same is true of the clerical or *religious state*. Therefore an insult hurled against a clergyman, or several clergymen, or against a religious, or one house or congregation of religious, or even a whole order could not be called an affront against the religious state.[32]

7.° *Books which teach or approve any kind of superstition, fortune-telling, divination, magic, the evocation of spirits, and other similar practices.*[33]

Superstition seems to be here taken as a distinct and coordinate, not as a comprehensive term, and hence means a specific form of belief, which manifests ignorant or abnormal credulity, such as the belief in omens, charms, etc. The other terms include the whole broad field of occultism or Spiritism, witchcraft, sorcery, clairvoyancy, and so forth. Hypnotism and somnambulism, if superstitious, are also included. Books *teaching or approving* such practices are forbidden, not, of course, books written for the purpose of combatting them.

8.° *Books which defend the lawfulness of duelling or suicide or divorce; or which try to prove that Freemasonry*

31 However, this must be understood, not of single canons or rubrics, but of the law and liturgy as a whole, or at least some compact part thereof.

32 Thus the commentators generally; see Wernz, *l. c.*, p. 123.

33 Somewhat different appears to be the meaning in "*Officiorum ac munerum*," art. 12.

and other similar sects are useful and not detrimental to Church and State.

Statuere, in the first clause, means literally to establish, determine, pass judgment or demonstrate. To do this requires no *ex professo* treatise, but the tendency to make duelling, etc., appear lawful, must be manifest. Law books which admit divorce are excepted from this prohibition, because they are merely repositories of laws. But a pamphlet written to recommend a divorce bill would certainly be prohibited.

The second class treats of *Masonic and similar sects.* Masonic societies are those which have special rites, secret oaths, and advocate subversive principles. The last mentioned feature is now regarded as a characteristic feature,[34] and hence all anarchistic, Bolshevist, and extremely Socialistic societies are included.[35] However, such books or pamphlets, to fall under the prohibition of our canon, must *make a serious attempt* to prove the usefulness or harmlessness of these sects. This requires argumentation which is apt to convince the reader.

9.° *Books which of set purpose treat of, relate, or inculcate lascivious and obscene things.* Hither belongs the whole class of strictly so-called pornographic literature, as well as innumerable romances, novels, and poems. To treat of (*tractare*) implies a frivolous or alluring style. *Narrare* refers to a minute or detailed account of obscene facts, whilst *docere* may be taken as indicating that the reader deduces false conclusions from the description or narrative. From this it is evident that scientific treatises on medicine, surgery, pastoral medicine, and moral theology do not belong to the category of for-

34 Cfr. S. C. P. F., Sept. 24, 1867 (*Coll.*, n. 1320).

35 Vermeersch (*l. c.*, n. 13) doubts whether Socialists are included because they are, he maintains, neither a *factio* (*une partie*, a

bidden books [36] unless they are written in a style which clearly betrays the purpose of the author to be other than scientific.

The term "books" here excludes images, pictures, drawings, engravings, photogravures, etc.

10.° Editions of *liturgical books* approved by the Apostolic See, which have been altered so as *no* longer to agree with the *authentic texts.*

11.° Books which spread apocryphal indulgences or indulgences that have been proscribed or recalled by the Holy See.

12.° Images, however printed, of our Lord Jesus Christ, the Blessed Virgin Mary, the Angels, the Saints, and other Servants of God, if not in keeping with the spirit or decrees of the Church.

These last three classes of publications have been sufficiently explained under canons 1257, 1279, 919.

EXCEPTION IN FAVOR OF THEOLOGICAL STUDENTS

CAN. 1400

Usus librorum de quibus in can. 1399, n. 1, ac librorum editorum contra praescriptum can. 1391, iis dumtaxat permittitur qui studiis theologicis vel biblicis quovis modo operam dant, dummodo iidem libri fideliter et integre editi sint neque impugnentur in eorum prolegomenis aut adnotationibus catholicae fidei dogmata.

Editions of the original text of Holy Scripture, of the ancient versions by non-Catholics, and translations into

party), nor a secret (*occulta*) sect. But the latter characteristic is not absolutely needed, according to the preceding note; and the attribute of faction or party can certainly not be denied to such Socialist bodies as the Spartacists in Germany.

[36] Wernz, *l. c.*, p. 122.

the vernacular made and published either by non-Catholics or by Catholics without previous censorship, are allowed to such as are in any way engaged in theological or biblical studies, provided, however,

(1) that these editions are faithful and entire, and

(2) that neither the introduction nor the annotations contain attacks on Catholic dogmas.

There is, then, a privileged class of persons, who may make use of the aforesaid forbidden books, but not of others mentioned in the preceding canon, namely those engaged in *theological* or *biblical studies*. Theology comprises first and above all dogmatic theology, but may be taken as coextensive with the theological course of can. 1365, § 2, and therefore includes all branches usually taught with theology. This interpretation is not contradicted by the declaration of the S. C. of the Index, of June 21, 1898, which (*ad 2am partem*) excludes from this privilege those who simply read the Hebrew or Greek text of S. Scripture without reference to *theological studies*.[37] Hence one purpose of using these otherwise forbidden books is theological study. Another is the pursuit of *biblical studies, viz.*, introduction, hermeneutics, and exegesis. Now both these studies may be pursued not only by professional theologians and biblical scholars or professors, but also by students in seminaries, universities, etc. All these share in the privilege extended by can. 1400.[38]

Is the use of these editions allowed if one has to prepare a sermon or lecture? Our answer would be that for a usual Sunday or holyday sermon no special theological or biblical study is required, and therefore we could not

37 Cfr. Wernz, *l. c.*, p. 120; mistaken is Hurley's interpretation, *l. c.*, p. 69.

38 Cfr. S. C. Indic., May 23, 1898, ad 1 (*Coll. P. F.*, n. 2000).

say that these preachers are engaged in (*operam dant*) such studies.[39] But if one would have to deliver an elaborate *lecture* on a theological subject, say for instance, on creation, on the Real Presence, or on Holy Orders, he would certainly have to study his subject, and therefore would be allowed to make use of these editions.[40]

PERSONS EXEMPT FROM THE PROHIBITION

CAN. 1401

S. R. E. Cardinales, Episcopi, etiam titulares, aliique Ordinarii, necessariis adhibitis cautelis, ecclesiastica librorum prohibitione non adstringuntur.

Cardinals, residential as well as titular bishops, and other Ordinaries, provided they employ the necessary precautions, are not bound by the law of forbidden books, (but must obey the law of previous censorship).

What precautions are to be taken is not determined by the Code. They may be described as follows:

(a) The natural as well as positive law requires that one should not expose his faith and morals unnecessarily to danger (cfr. can. 1405, § 1), for no one is immune from temptations.

(b) No one is allowed to read lascivious or obscene books unless bound to do so *ex officio*, to examine them;

(c) If the persons mentioned retain forbidden books, they must see to it that they do not fall into the hands of those not permitted to read them. This does not mean, however, that Ordinaries, etc., may not communicate

[39] If one, by way of exception, should need a critical edition, or should have no other text at hand, he would be excused.

[40] The best known editions by non-Catholic authors are those of Tischendorf, Tregelles, and Westcott and Hort.

among themselves or converse with their censors about such books.

Here it may be useful to add a word about *librarians.* These, being custodians, not proprietors or retainers, of the books in their care, should see to it that forbidden books are kept separate, or if this is impossible or impracticable, that a warning sign be placed on the shelves containing forbidden or dangerous books.

The *prelates or superiors of exempt clerical institutes,* who, according to our canon and canon 198, are free from the restrictions of the law regarding forbidden books, should take care that their libraries are so managed as to preclude danger to their subjects.

This rule may also be applied to *parish libraries,* though these, as a rule, will hardly keep forbidden books, with the exception perhaps of non-Catholic editions of the Bible.

What we have said is nothing but a logical deduction from *can. 1403, § 2,* which strictly obliges those who have obtained faculties for reading or retaining forbidden books, to guard them carefully, so that they do not fall into the hands of others.

FACULTIES

CAN. 1402

§ 1. Ordinarii licentiam, ad libros quod attinet ipso iure vel decreto Sedis Apostolicae prohibitos, concedere suis subditis valent pro singulis tantum libris atque in casibus dumtaxat urgentibus.

§ 2. Quod si generalem a Sede Apostolica facultatem impetraverint suis subditis permittendi ut libros proscriptos retineant ac legant, eam nonnisi cum delectu et iusta ac rationabili causa concedant.

CAN. 1403

§ 1. Qui facultatem apostolicam consecuti sunt legendi et retinendi libros prohibitos, nequeunt ideo legere et retinere libros quoslibet a suis Ordinariis proscriptos, nisi in apostolico indulto expressa iisdem facta fuerit potestas legendi et retinendi libros a quibuslibet damnatos.

§ 2. Insuper gravi praecepto tenentur libros prohibitos ita custodiendi, ut hi ad aliorum manus non perveniant.

Can. 1402 mentions two kinds of faculties, one granted by the law itself, the other by the Apostolic See.

1. *Ordinaries, i. e.,* all who go by that name [41] in virtue of can. 198, § 1, may grant permission to their subjects to read books forbidden either by law (*i. e.,* by the Code) or by a special decree of the Apostolic See, but they can impart this faculty only for individual books and in urgent cases. The term "*pro singulis tantum libris*" means that each book must be distinctly mentioned by title and no wholesale permission may be issued. The plural form, *singulis libris,* permits the faculty to be given for more than one book at a time, provided they are duly specified.

Urgent cases are such as arise suddenly and unexpectedly. Thus if a writer needs a certain book for immediate use, he may apply to his Ordinary, (either the local Ordinary, if he is subject to him, or the exempt religious superior, if he is an exempt religious) and obtain the permission needed.

It may have surprised the reader to find *libri lascivi vel*

41 Wernz, *l. c.,* p. 129 correctly held against Pennacchi that all ordinaries, hence also religious superiors who, according to can. 488, n. 8 and can. 501, § 1, have jurisdiction *in foro externo,* must here be understood.

obscoeni mentioned under n. 9 without the restriction or mitigation found in rule 10 of the Constitution of Leo XIII, in favor of *classical writers*. Does the New Code abolish this mitigation? It does, though § 1 of can. 1402 permits teachers and others whose office necessitates such reading, to apply to their superiors for the faculty, if the case is urgent, as it generally is.

§ 2 mentions a general faculty granted by the Apostolic See (Holy Office).[42] If such a general faculty has been given to Ordinaries for the benefit of their subjects, it should be communicated to the latter with discretion and only for a just and reasonable cause.

The term "*cum delectu*" doubtless refers to the *persons* subject to the Ordinaries. These persons are described in the Clementine Instruction as men of learning and piety who labor for the public welfare and that of the Catholic Church. Being engaged in such work constitutes a reasonable and just cause for granting the permission.

Ordinaries who have this general (either triennial or quinquennial) faculty, before granting either perpetual or revocable permission to their subjects,[43] should carefully read the text of the grant, for it may be that some classes of books (*e. g., libri obscoeni* or books *ex professo* defending heresy and schism or undermining the foundations of religion) are excepted.

Can. 1403 rules that those who have obtained a papal faculty for reading and keeping forbidden books, are not thereby entitled to read and keep books proscribed by their Ordinaries unless the indult which they have ob-

42 Secular prelates have to petition the Holy Office if they are under the ordinary hierarchical jurisdiction; otherwise the S. C. de Propaganda Fide. Religious prelates must apply to the S. C. Relig.

43 Wernz, *l. c.*, p. 129.

tained contains the express clause that they may read and keep books *no matter by whom condemned.*[44]

What was said under can. 1395, also applies here and should be compared with rule 26 of the Constitution of Leo XIII, which employs the term "local Ordinaries" (*Ordinariis locorum*), whereas our canon mentions Ordinaries in general. The consequence is that if the local Ordinary or bishop forbids a book, or magazine, or paper, exempt religious are not, juridically speaking, bound to heed the proscription, until their superior has approved it. On the other hand, the religious superior of an exempt clerical institute may forbid a book or pamphlet or magazine not forbidden by the local Ordinary. Therefore a religious who has obtained a papal indult to read and keep forbidden books is not allowed to read or retain a book forbidden by his (exempt) religious superior, unless the above-mentioned clause is found in the papal indult. This rule holds good even if the local Ordinary or religious superior should prohibit a book already proscribed either by common law or by a special decree of the Apostolic See; for there may be a special local or personal reason why this book should be doubly forbidden.

We may finally admit a certain *epikeia* when an adequate reason of utility or necessity exists for not observing the law, as far as its positive side is concerned, provided, of course, there be no danger to faith or morals.[45]

BOOKSELLERS

CAN. 1404

Librorum venditores libros de obscenis ex professo tractantes ne vendant, commodent, retineant; ceteros

44 Hurley, *l. c.*, p. 172 f. 45 Vermeersch, *l. c.*, n. 34.

prohibitos venales ne habeant, nisi debitam licentiam a Sede Apostolica impetraverint, neve cuiquam vendant, nisi prudenter existimare possint ab emptore legitime peti.

Catholic booksellers [46] are bound in conscience:

1.° Not to sell, loan, or keep books which treat *ex professo* of *obscene subjects.* Here again no distinction is made between classical and ordinary authors, and therefore all obscene books are included. However, it stands to reason that purged or corrected editions of classical authors may be sold.

2.° Not to *offer for sale any other forbidden books,* except with the permission of the Apostolic See (*i. e.,* the Holy Office), nor to sell any such books to anyone of whom it cannot be reasonably supposed that he asks for them lawfully.

Venales habere means to exhibit or offer for sale. Since the term "*retinere*" does not occur in this clause, we may reasonably suppose that booksellers are allowed to keep such books in stock, but only in a hidden or secret place, not publicly. But they may not list them in their catalogues or advertise them unless they have obtained a papal indult to this effect. Even if they have such an indult, they should be careful not to sell forbidden books indiscriminately. If a customer asks for a forbidden book, they are not indeed obliged to ask whether he has permission to read and keep it, but they should be morally certain that he does not ask unreasonably.

46 A distinction between Catholic and non-Catholic booksellers was drawn in "*Officiorum ac munerum,*" n. 46, but it is not repeated in our Code, because the Code legislates for Catholics only.

CAN. 1405

§ 1. Licentia a quovis obtenta nullo modo quis eximitur a prohibitione iuris naturalis legendi libros qui ipsi proximum spirituale periculum praestant.

§ 2. Ordinarii locorum aliique curam animarum habentes opportune moneant fideles de periculo et damno lectionis librorum pravorum, praesertim prohibitorum.

§ 1. A license to read forbidden books does not in any way exempt one from the prohibition of the natural law against reading books which are to him a proximate occasion of sin. Therefore

§ 2. The local Ordinaries and all those in charge of souls should warn the faithful of the danger and injury caused by reading bad, especially forbidden, books.

It is obvious that one who disobeys the law of the Church and neglects the precautions dictated by reason, cannot expect supernatural help against temptations.

For completeness' sake we here add can. 2318.

PENAL SANCTION

CAN. 2318

§ 1. In excommunicationem Sedi Apostolicae speciali modo reservatam ipso facto incurrunt, opere publici iuris facto, editores librorum apostatarum, haereticorum et schismaticorum, qui apostasiam, haeresim, schisma propugnant, itemque eosdem libros aliosve per apostolicas litteras nominatim prohibitos defendentes aut scienter sine debita licentia legentes vel retinentes.

§ 2. Auctores et editores qui sine debita licentia sacrarum Scripturarum libros vel earum adnotationes aut commentarios imprimi curant, incidunt ipso facto in excommunicationem nemini reservatam.

§ 1. Those who publish books written by apostates, heretics, and schismatics defending apostasy, heresy, or schism, incur the excommunication reserved *speciali modo* to the Holy See. The same penalty is incurred by those who defend such books or others nominally forbidden by Apostolic letter, or who knowingly read or retain them without due permission.

§ 2. Authors and publishers who, without due permission, print books of Sacred Scripture or annotations and commentaries thereon, incur excommunication reserved to no one.